



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**ELC NO. 1 OF 2006**

**TITUS ALFRED OMUDANG ISILI.....PLAINTIFF**

**VERSUS**

**BEATRICE CHEMAYIEK NDIEMA.....1<sup>ST</sup> DEFENDANT**

**PASTOR ELIJAH MUNYEKENYE.....2<sup>ND</sup> DEFENDANT**

**ROSEMARY NANJALA.....3<sup>RD</sup> DEFENDANT**

**AUGUSTINE SHAKAMA OBISIBA WAMALWA.....4<sup>TH</sup> DEFENDANT**

**AINEA MASAFU OMANYA.....5<sup>TH</sup> DEFENDANT**

**NOBERT MAELO BARASA.....6<sup>TH</sup> DEFENDANT**

**JOHN WASIKE.....7<sup>TH</sup> DEFENDANT**

**BENJAMIN OCHIENG.....8<sup>TH</sup> DEFENDANT**

**TIMOTHY KIPKOECH KETER.....9<sup>TH</sup> DEFENDANT**

**OMARI BISAULE NJOFU.....10<sup>TH</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion dated 12/6/2020 and filed in court on 17/6/2020 brought under **Order 42 Rule 6 of the Civil Procure Rules**, the defendants seek the following orders:

(1) Spent...

(2) That this honourable court be pleased to grant interim orders of stay of execution of the decree herein pending hearing and determination of this application

(3) That there be a stay of execution of decree or any order to evict or remove the defendants from their occupation of title No. Waitaluk/Mabonde/Mabonde Block 3/Namgoi 190 and 191, pending hearing and final determination of the intended appeal.

(4) That costs be provided.

2. The application is supported by the affidavit of the 1<sup>st</sup> defendant sworn on 12/6/2020 on her own behalf and on behalf of the other defendants. The grounds upon which the application is based on are that this court ordered the eviction of the 1<sup>st</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, and 9<sup>th</sup> defendants from the title known as **Waitaluk Mabonde Block 3/Namgoi/191**; that a notice of appeal has been filed evidencing an intention to appeal against that decision of this court; that should the applicants be evicted from their homes they will suffer irreparable loss; that the respondent would not be prejudiced by the grant of the orders sought and that the application has been timeously brought.

3. The respondent did not file any response to the application and this court considers it unopposed. None of the parties filed submissions in respect of the application.
4. The issue that arises in the instant application is whether an order of stay of execution of the decree pending an intended appeal against this court's judgment should issue.
5. There is a notice of appeal filed in the court record. Therefore, for the purposes of the instant application there is an appeal in place.
6. The application was filed on **17/6/2020** while the judgment had been delivered on **20<sup>th</sup> May 2020**. I do not consider that delay to be inordinate.
7. The applicants have demonstrated that they are on the suit land and if evicted they would suffer some loss. The application states that they have developed the aesthetics of their respective homes over time and that if they are evicted that aspect of their homes may be adversely affected and this may render the appeal nugatory.
8. The plaintiff is also said to be having a place to stay and granting of the orders would therefore not be extremely prejudicial to him.
9. I find that the instant application has merit. I hereby grant the application dated **12/6/2020** in terms of **Prayer No. (3)** thereof. However the defendants shall file and serve their Record of Appeal within forty five (**45**) days of this order in default of which the order of stay of execution issued herein shall stand automatically vacated and the plaintiff shall be at liberty to execute the decree against them. The costs of the application shall be costs in the appeal.

It is so ordered.

**Dated, signed and delivered at Kitale via electronic mail on this 30<sup>th</sup> day of July, 2020.**

**MWANGI NJOROGE**

**JUDGE, ELC, KITALE.**